

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA –SOUTHERN DIVISION
3

4 BANNER LIFE INSURANCE
5 COMPANY, a corporation,

6 Plaintiff,

7 v.

8 STEVE BOBBY STEVENS, an
9 individual,

10 Defendant

Case No. 8:17-cv-1417-CJC (KESx)

**ORDER RE:
STIPULATED PROTECTIVE ORDER**

11
12
13 1. A. PURPOSES AND LIMITATIONS

14 Discovery in this action is likely to involve production of confidential,
15 proprietary, or private information for which special protection from public
16 disclosure and from use for any purpose other than prosecuting this litigation may be
17 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
18 the following Stipulated Protective Order. The parties acknowledge that this Order
19 does not confer blanket protections on all disclosures or responses to discovery and
20 that the protection it affords from public disclosure and use extends only to the limited
21 information or items that are entitled to confidential treatment under the applicable
22 legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that
23 this Stipulated Protective Order does not entitle them to file confidential information
24 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
25 standards that will be applied when a party seeks permission from the court to file
26 material under seal.
27
28

1
2 B. GOOD CAUSE STATEMENT

3 This action is likely to involve customer or patient medical records and related
4 documents that contain private, protected personal identifying information regarding the
5 insured under the policy at issue (“Protected Medical Records”), the public disclosure of
6 which is prohibited by law. It will also likely involve Plaintiff’s confidential and
7 proprietary insurance underwriting and claims guidelines (“Underwriting/Claims
8 Guidelines”), for which special protection from public disclosure and from use for
9 any purpose other than prosecution of this action is warranted. Such documents and
10 information are not generally available to the public, and may be privileged or otherwise
11 protected from disclosure under state or federal statutes, court rules, case decisions, or
12 common law.
13

14 Accordingly, to expedite the flow of information, to facilitate the prompt
15 resolution of disputes over confidentiality of discovery materials, to adequately protect
16 information the parties are entitled to keep confidential, to ensure that the parties are
17 permitted reasonable necessary uses of such material in preparation for and in the
18 conduct of trial, to address their handling at the end of the litigation, and serve the ends
19 of justice, a protective order for such information is justified in this matter. It is the
20 intent of the parties that information will not be designated as confidential for tactical
21 reasons and that nothing be so designated without a good faith belief that it has been
22 maintained in a confidential, non-public manner, and there is good cause why it should
23 not be part of the public record of this case.
24
25

26 2. DEFINITIONS

27 2.1 Action: this pending federal law suit.
28

1 2.2 Challenging Party: a Party or Non-Party that challenges the
2 designation of information or items under this Order.
3

4 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
5 how it is generated, stored or maintained) or tangible things that qualify for
6 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
7 the Good Cause Statement, and are limited to Protected Medical Records and/or
8 Underwriting/Claims Guidelines.
9

10 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
11 their support staff).

12 2.5 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”
15

16 2.6 Disclosure or Discovery Material: all items or information, regardless of
17 the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced or
19 generated in disclosures or responses to discovery in this matter.
20

21 2.7 Expert: a person with specialized knowledge or experience in a matter
22 pertinent to the litigation who has been retained by a Party or its counsel to serve as
23 an expert witness or as a consultant in this Action.

24 2.8 House Counsel: attorneys who are employees of a party to this Action.
25 House Counsel does not include Outside Counsel of Record or any other outside
26 counsel.
27

28 2.9 Non-Party: any natural person, partnership, corporation, association, or
other legal entity not named as a Party to this action.

1 2.10 Outside Counsel: attorneys who are not employees of a party to this
2 Action but are retained to represent or advise a party to this Action and have appeared
3 in this Action on behalf of that party or are affiliated with or consulted by a law firm
4 which has appeared on behalf of that party, and includes support staff.
5

6 2.11 Party: any party to this Action, including all of its officers, directors,
7 employees, consultants, retained experts, and Outside Counsel of Record (and their
8 support staffs).
9

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action, limited to Protected Medical Records and/or
12 Underwriting/Claims Guidelines.

13 2.13 Professional Vendors: persons or entities that provide litigation support
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)
16 and their employees and subcontractors.
17

18 2.14 Protected Material: any Disclosure or Discovery Material that is
19 designated as “CONFIDENTIAL,” provided that it is limited to Protected Medical
20 Records and/or Underwriting/Claims Guidelines.

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
22 from a Producing Party.
23

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected
26 Material (as defined above), but also (1) any information copied or extracted from
27 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
28 Material; and (3) any testimony, conversations, or presentations by Parties or their

1 Counsel that might reveal Protected Material.

2
3 Any use of Protected Material at trial shall be governed by the orders of the
4 trial judge. This Order does not govern the use of Protected Material at trial.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
8 in writing or a court order otherwise directs. Final disposition shall be deemed to be
9 the later of (1) dismissal of all claims and defenses in this Action, with or without
10 prejudice; and (2) final judgment herein after the completion and exhaustion of all
11 appeals, rehearings, remands, trials, or reviews of this Action, including the time
12 limits for filing any motions or applications for extension of time pursuant to applicable
13 law.
14

15 5. DESIGNATING PROTECTED MATERIAL

16
17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
18 Party or Non-Party that designates information or items for protection under this
19 Order must take care to limit any such designation to specific material that qualifies
20 under the appropriate standards, and is limited to Protected Medical Records and/or
21 Underwriting/Claims Guidelines. The Designating Party must designate for protection
22 only those parts of material, documents, items, or oral or written
23 communications that qualify so that other portions of the material, documents,
24 items, or communications for which protection is not warranted are not swept
25 unjustifiably within the ambit of this Order.
26

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that
28 are shown to be clearly unjustified or that have been made for an improper purpose

1 (e.g., to unnecessarily encumber the case development process or to impose unnecessary
2 expenses and burdens on other parties) may expose the Designating Party to
3 sanctions.
4

5 If it comes to a Designating Party's attention that information or items that it
6 designated for protection do not qualify for protection, that Designating Party must
7 promptly notify all other Parties that it is withdrawing the inapplicable designation.
8

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this
10 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.
14

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic
17 documents, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), that the Producing Party affix at a minimum, the legend
19 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains
20 protected material. If only a portion or portions of the material on a page qualifies for
21 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
22 by making appropriate markings in the margins).
23

24 A Party or Non-Party that makes original documents available for inspection
25 need not designate them for protection until after the inspecting Party has indicated
26 which documents it would like copied and produced. During the inspection and
27 before the designation, all of the material made available for inspection shall be
28 deemed "CONFIDENTIAL." After the inspecting Party has identified the

documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation

1 of confidentiality at any time that is consistent with the Court's Scheduling Order.

2
3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
4 resolution process under Local Rule 37.1 et seq.

5 6.3 The burden of persuasion in any such challenge proceeding shall be on the
6 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
7 to harass or impose unnecessary expenses and burdens on other parties) may expose
8 the Challenging Party to sanctions. Unless the Designating Party has waived or
9 withdrawn the confidentiality designation, all parties shall continue to afford the
10 material in question the level of protection to which it is entitled under the
11 Producing Party's designation until the Court rules on the
12 challenge.
13

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15
16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this
18 Action only for prosecuting, defending, or attempting to settle this Action. Such
19 Protected Material may be disclosed only to the categories of persons and under the
20 conditions described in this Order. When the Action has been terminated, a Receiving
21 Party must comply with the provisions of section 13 below (FINAL
22 DISPOSITION).
23

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated
2
3 “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
5 well as employees of said Outside Counsel of Record to whom it is reasonably
6 necessary to disclose the information for this Action;

7 (b) the officers, directors, and employees (including House Counsel) of the
8 Receiving Party to whom disclosure is reasonably necessary for this Action;
9

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this Action and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

15 (f) professional jury or trial consultants, mock jurors, and Professional
16 Vendors to whom disclosure is reasonably necessary for this Action and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
18

19 (g) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information;

21 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
22 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
23 requests that the witness sign the form attached as Exhibit 1 hereto, unless the witness
24 is an officer, director, or employee of any Party, in which event no request or signature
25 is required; and (2) they will not be permitted to keep any confidential information
26 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
27 unless otherwise agreed by the Designating Party or ordered by the court. Pages of
28

1 transcribed deposition testimony or exhibits to depositions that reveal Protected
2 Material may be separately bound by the court reporter and may not be disclosed to
3 anyone except as permitted under this Stipulated Protective Order; and
4

5 (i) any mediator or settlement officer, and their supporting personnel,
6 mutually agreed upon by any of the parties engaged in settlement discussions.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
8 OTHER LITIGATION
9

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this Action as
12 “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification
14 shall include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order
16 to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is subject to this Protective Order. Such notification shall include a
18 copy of this Stipulated Protective Order; and
19

20 (c) cooperate with respect to all reasonable procedures sought to be
21 pursued by the Designating Party whose Protected Material may be affected.
22

23 If the Designating Party timely seeks a protective order, the Party served with the
24 subpoena or court order shall not produce any information designated in this action
25 as “CONFIDENTIAL” before a determination by the court from which the subpoena
26 or order issued, unless the Party has obtained the Designating Party’s permission.
27 The Designating Party shall bear the burden and expense of seeking protection in
28 that court of its confidential material and nothing in these provisions should be

1 construed as authorizing or encouraging a Receiving Party in this Action to disobey a
2 lawful directive from another court.

3
4 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
5 PRODUCED IN THIS LITIGATION

6 (a) The terms of this Order are applicable to information produced by a
7 Non-Party in this Action and designated as "CONFIDENTIAL," provided that it is
8 limited to Protected Medical Records and/or Underwriting/Claims Guidelines. Such
9 information produced by Non-Parties in connection with this litigation is protected by
10 the remedies and relief provided by this Order. Nothing in these provisions should be
11 construed as prohibiting a Non-Party from seeking additional protections.

12
13 (b) In the event that a Party is required, by a valid discovery request, to
14 produce a Non-Party's confidential information in its possession, and the Party is
15 subject to an agreement executed prior to the discovery request with the Non-Party
16 not to produce the Non-Party's confidential information, then the Party shall:

17
18 1. promptly notify in writing the Requesting Party and the Non-Party
19 that some or all of the information requested is subject to a confidentiality agreement
20 with a Non-Party;

21 2. promptly provide the Non-Party with a copy of the Stipulated
22 Protective Order in this Action, the relevant discovery request(s), and a reasonably
23 specific description of the information requested; and
24

25 3. make the information requested available for inspection by the
26 Non-Party, if requested.

27 (c) If the Non-Party fails to seek a protective order from this court within 14
28 days of receiving the notice and accompanying information, the Receiving Party may

1 produce the Non-Party's confidential information responsive to the discovery request.
2
3 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
4 any information in its possession or control that is subject to the confidentiality
5 agreement with the Non-Party before a determination by the court. Absent a court
6 order to the contrary, the Non-Party shall bear the burden and expense of seeking
7 protection in this court of its Protected Material.

8
9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
13 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to
14 retrieve all unauthorized copies of the Protected Material, (c) inform the person or
15 persons to whom unauthorized disclosures were made of all the terms of this Order, and
16 (d) request such person or persons to execute the "Acknowledgment and
17 Agreement to Be Bound" that is attached hereto as Exhibit A.
18

19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
20 PROTECTED MATERIAL

21 When a Producing Party gives notice to Receiving Parties that certain
22 inadvertently produced material is subject to a claim of privilege or other protection, the
23 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
24 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
25 may be established in an e-discovery order that provides for production without
26 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as
27 the parties reach an agreement on the effect of disclosure of a communication or
28

1 information covered by the attorney-client privilege or work product protection, the
2 parties may incorporate their agreement in the stipulated protective order submitted
3 to the court.
4

5 12. MISCELLANEOUS

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
7 person to seek its modification by the Court in the future.
8

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to
11 disclosing or producing any information or item on any ground not addressed in this
12 Stipulated Protective Order. Similarly, no Party waives any right to object on any
13 ground to use in evidence of any of the material covered by this Protective Order.
14

15 12.3 Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
17 only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. If a Party's request to file Protected Material
19 under seal is denied by the court, then the Receiving Party may file the information
20 in the public record unless otherwise instructed by the court.
21

22 13. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in paragraph 4, within 60
24 days of a written request by the Designating Party, each Receiving Party must return all
25 Protected Material to the Producing Party or destroy such material. As used in this
26 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected
28 Material. Whether the Protected Material is returned or destroyed, the Receiving

1 Party must submit a written certification to the Producing Party (and, if not the same
2 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
3 category, where appropriate) all the Protected Material that was returned or
4 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
5 compilations, summaries or any other format reproducing or capturing any of the
6 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
7 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
8 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
9 attorney work product, and consultant and expert work product, even if such materials
10 contain Protected Material. Any such archival copies that contain or constitute Protected
11 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).
12

13
14 14. Any violation of this Order may be punished by any and all appropriate
15 measures including, without limitation, contempt proceedings and/or monetary
16 sanctions.
17

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 /s/ Jodi K. Swick

10/25/2017

20 Attorneys for Plaintiff

Date

21 Burton Mark Senkoff

October 24, 2017

22 Attorneys for Defendant

Date

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED
24

25 Dated: 10/30/2017

Karen E. Scott

Hon. Karen E. Scott

United States District/Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare
6 under penalty of perjury that I have read in its entirety and understand the Stipulated
7 Protective Order that was issued by the United States District Court for the Central
8 District of California on [date] in the case of *Banner Life Insurance Company v. Steve*
9 *Bobby Stevens*, Case No. 8:17-cv-01417-CJC-KES. I agree to comply with and to be
10 bound by all the terms of this Stipulated Protective Order and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and punishment in
12 the nature of contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any person
14 or entity except in strict compliance with the provisions of this Order.

15
16 I further agree to submit to the jurisdiction of the United States District Court for the
17 Central District of California for the purpose of enforcing the terms of this Stipulated
18 Protective Order, even if such enforcement proceedings occur after termination of this
19 action. I hereby appoint _____ [print or type
20 full name] of _____ [print or type
21 full address and telephone number] as my California agent for service of process in
22 connection with this action or any proceedings related to enforcement of this Stipulated
23 Protective Order.

24 Date: _____

25
26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____